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IN THE

Supreme Court of the United States

October Term, 1949

No. 393 J. D. PEDIGO, et al., *Petitioners*
No. 394 A. C. CARROLL, et al., *Petitioners*
No. 395 S. T. ALRED, et al., *Petitioners*
No. 396 LOWELL E. WOMACK, *Petitioner*
No. 397 S. T. ALRED, et al., *Petitioners*
No. 398 J. D. PEDIGO, et al., *Petitioners*
No. 399 LOWELL E. WOMACK, *Petitioner*

v.

CELANESE CORPORATION OF AMERICA,
Respondent

BRIEF FOR THE CONGRESS OF INDUSTRIAL ORGANIZATIONS AS AMICUS CURIAE IN SUPPORT OF THE PETITION FOR CERTIORARI

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INTEREST OF THE CONGRESS OF INDUSTRIAL ORGANIZATIONS

This case presents an issue which has rarely come before this Court but which arises often in state trial courts. That issue is whether defendants in a criminal contempt proceeding are entitled to the procedural protections of the due process clause.

While many northern and eastern states have anti-injunction legislation patterned after the Norris-LaGuardia Act, such legislation is wholly lacking in perhaps the majority of states. And in many states, particularly in the south, use of the labor injunction is markedly on the increase.

The CIO, because it is a federation of labor unions, and particularly because its efforts to organize workers in the

southern states have been seriously hampered by widespread use of the labor injunction, has an immediate interest in the question of the procedural rights of strikers accused of violating labor injunctions.

This brief *amicus* is filed with the consent of both parties.

QUESTION PRESENTED

Whether defendants in a criminal contempt proceeding are entitled to the procedural protections of the due process clause, and particularly whether such defendants are entitled to the benefits of the reasonable doubt rule, or may be convicted upon a mere preponderance of the evidence.

STATEMENT

During a strike at respondent's plant in Rome, Georgia, a state trial court issued a temporary restraining order regulating picketing and other activities of the strikers. Petitioners were cited for contempt of this order, and after a trial, the trial court "found the evidence to preponderate against" the petitioners (R. 258, 259, 281, 301), and adjudged them to be "guilty of civil contempt" (R. 47, 158, 205). Petitioners appealed to the Supreme Court of Georgia from the judgment finding them guilty of civil contempt.

In applying the preponderance of the evidence rule against the petitioners, rather than the reasonable doubt rule, and in adjudging them guilty of civil contempt rather than of criminal contempt, the trial court followed the then latest decision of the Supreme Court of Georgia in *Wagner* v. *Commercial Printers*, 203 Ga. 1.

Thereafter the strike was settled. As part of the settlement the respondent agreed with the union not to oppose motions by petitioners for permanent stays of execution of the contempt judgments. Moreover, since the sole purpose of a civil contempt proceeding is to secure obedience to the court decree for the benefit of the successful litigant, it is the rule both in Georgia and elsewhere that a civil contempt proceeding abates upon the settlement of the main cause. Nevertheless, the trial

judge refused to issue stays of execution of the contempt judgments. Petitioners appealed this issue also to the Supreme Court of Georgia.

The Supreme Court of Georgia thereupon overruled its decision in the *Wagner* case, and held that the contempts in the present cases were criminal rather than civil (R. 319). Accordingly, it held that the contempt judgments did not abate with the settlement of the underlying litigation.

REASONS FOR GRANTING THE WRIT

The issue which this case presents is whether the due process clause of the Fourteenth Amendment requires that a defendant in a criminal contempt case be given the benefit of the reasonable doubt rule which normally applies in criminal cases, or whether such a defendant may, consistently with due process, be convicted upon a mere preponderance of the evidence.

The general question of the procedural rights under the Constitution of a defendant in a criminal contempt case was recently considered by this Court in *In Re Oliver*, 333 U. S. 257. And the Court there held that the procedural protections of the due process clause extend in full measure to a defendant in a criminal contempt case, with the exception of cases involving misconduct in open court in the personal presence of the judge. This Court declared (pp. 275-276):

> Except for a narrowly limited category of contempts, due process of law as explained in the Cooke case [Cooke v. United States, 267 U. S. 517] requires that one charged with contempt of court be advised of the charges against him, have a reasonable opportunity to meet them by way of defense or explanation, have the right to be represented by counsel, and have a chance to testify and call other witnesses in his behalf, either by way of defense or explanation. The narrow exception to these due process requirements includes only charges of misconduct, in open court, in the presence of the judge, which disturbs the court's business, where all of the essential elements of the misconduct are under the eye of the court, are actually observed by the court, and where immediate punishment is essential to prevent "demoralization of the court's authority * * * before the public." If some essential

> elements of the offense are not personally observed by the judge, so that he must depend upon statements made by others for his knowledge about these essential elements, due process requires, according to the Cooke case, that the accused be accorded notice and a fair hearing as above set out.

While *In Re Oliver* did not involve the specific question, here presented, whether due process requires that the reasonable doubt rule, rather than the preponderance of the evidence rule, be used in a criminal contempt case, it does stand squarely for the proposition that defendants in criminal contempt proceedings are entitled to the procedural protections which the due process clause extends to defendants in ordinary criminal cases. And this Court has often declared that a defendant in a criminal contempt proceedings is constitutionally entitled to the reasonable doubt standard. *Gompers* v. *Buck's Stove & Range Co.*, 221 U. S. 418, 444; *Michaelson* v. *United States*, 266 U. S. 42, 66. In the *Gompers* case (p. 66) the court pointed out that there were differences between criminal and contempt proceedings—

> which involve substantial rights and constitutional privileges. Without deciding what may be the rule in civil contempt, it is certain that in proceedings for criminal contempt the defendant is presumed to be innocent, he must be proved to be guilty beyond a reasonable doubt, and he cannot be compelled to testify against himself.

While these cases involved criminal contempt cases in the federal courts, it will be noted that this Court had no hesitation in declaring that the defendant had a constitutional right to the application of the reasonable doubt rule. No basis is perceived under the constitution for any different result in a state court proceeding.

This Court has likewise held that the reasonable doubt rule is a constitutional requisite of procedural due process in ordinary criminal cases both in the federal courts, *Warszower* v. *United States*, 312 U. S. 342, 347, 348, and in the state courts, *Cockrill* v. *California*, 268 U. S. 258, 261; *Bailey* v. *Alabama*, 219 U. S. 219, 234. And we have already seen that in the *Oliver* case this Court held that the normal guarantees of

procedural due process extend to defendants in criminal contempt cases, excepting only those involving contempts committed in the presence of the judge.

In all probability the decision below cannot be reconciled with these decisions of this Court. At the least, the decision below presents a difficult and important question of constitutional law which should be decided by this Court.

CONCLUSION

For the reasons stated it is respectfully submitted that the petitions for writ of certiorari should be granted.

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